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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/538,827

12/12/2005

Gerhard Hauk

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08/17/2009

SYNGENTA CROP PROTECTION, INC.  
PATENT AND TRADEMARK DEPARTMENT  
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EXAMINER

VETERE, ROBERT A

ART UNIT

PAPER NUMBER

1792

NOTIFICATION DATE

DELIVERY MODE

08/17/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

department-gso.patent@syngenta.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/538,827	<b>Applicant(s)</b> HAUK, GERHARD	
	<b>Examiner</b> ROBERT VETERE	<b>Art Unit</b> 1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 12-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/05</u> .  | 6) <input type="checkbox"/> Other: _____                          |

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## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 12-18 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 4/20/2009.

2. Applicant's election with traverse of claims 1-11 and 19 in the reply filed on 4/20/2009 is acknowledged. The traversal is on the ground(s) that there is no serious burden present. This is not found persuasive because there are limitations present in the apparatus claims which do not appear in the method claims. For example, claim 13 includes limitations related to the configuration of pipes in the apparatus which are not required by the method claims of 1-11 and 19.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 7 lacks a verb and, consequently, fails to specify to what the ready-formulated pesticide or crop protection product limitations correspond. Based on applicant's specification, the examiner is interpreting this limitation to require that the "solid to be finely milled" of claim 1 is a ready-formulated pesticide or crop protection product.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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6. Claims 1-3 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Motoyama et al. (EP0179943).

**Claims 1-3:** Motoyama teaches a method of treating particles with a fluid comprising the steps of: introducing particles into a counter flow fluidized bed jet mill (p. 13; p. 14); injecting a coating solution into the mill via a nozzle (claimed finely divided liquid) (p. 14) and milling the particles in the presence of the fluid whereby the particles are coated with the fluid (p. 14). Motoyama further teaches that the liquid feed rate is controlled by a pump (p. 9).

**Claim 6:** Motoyama also teaches that the particles to be treated are a powdered material with an active ingredient (claimed read—formulated active ingredient mixture) (p. 5).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-3 and 6-11 rejected under 35 U.S.C. 103(a) as being unpatentable over Albert et al. (US 3,920,442) in light of Motoyama.

**Claims 1-3, 6-7:** Albert teaches a method of treating pesticide particles in a fluidized bed with a liquid (4:24-61). Albert further teaches that the method also comprises the step of milling the particles and exposing the particles to an atomized spray of the liquid coating material (10:17-41). Albert, however, fails to expressly teach that the milling is performed in the presence of the liquid. However, as discussed above, Motoyama teaches a method of coating particles comprising an active ingredient in a fluidized bed jet mill wherein the particles are milled in the presence of the coating liquid. The selection of a known material based on its suitability for its intended use supported a prima facie obviousness determination in *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was

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made to have milled the particles in the presence of the liquid in the method of Albert with the predictable expectation of success.

**Claims 8-9:** Albert further teaches that the particles are 44-150  $\mu\text{m}$  (11:17-22). In the case where the claimed ranges overlap or lie inside ranges disclosed by the prior art" a prima facie case of obviousness exists. In re Wertheim, 541 F.2d 257, 191 USPQ 90 (CCPA 1976). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have selected particles within applicant's claimed range in the method of Albert with the predictable expectation of success.

**Claim 10:** Albert also teaches that the liquid coating material is a surface active substance (10:36-41).

**Claim 11:** Albert also teaches that the amount of liquid applied is 11.04% by weight of the total pesticide powder (12:1-7).

9. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Albert and Motoyama in light of Conte et al. (US 5,476,654).

**Claims 4-5:** Albert teaches that the pesticide particles are coated with a surface active agent which makes the particles more water-soluble (5:57-68), but fails to teach that the particles are treated in a hammer or impact mill. Conte teaches a method of treating pesticide particles with a liquid which improves their water solubility (1:13-21) and further teaches that a hammer mill may be used in the place of a fluidized bed jet mill when treating the particles (3:26-31) (a hammer mill is a type of impact mill). The selection of a known material based on its suitability for its intended use supported a prima facie obviousness determination in *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have substituted the fluidized jet mill in the combined method of Albert and Motoyama with a hammer mill, as taught by Conte, with the predictable expectation of success.

10. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Albert and Motoyama in light of Nakamura (US 6,468,555).

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**Claim 19:** Albert teaches that the pesticide particle may be methomyl (see, e.g., claim 14), but fails to teach that thiamethoxam is used. Nakamura, however, teaches that thiamethoxam can be used interchangeably with methomyl (5:1-30) in applications where the pesticide particle is made into a wettable powder (5:31-47). The selection of a known material based on its suitability for its intended use supported a prima facie obviousness determination in *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have selected thiamethoxam instead of methomyl as the pesticide powder in the combined method of Albert and Motoyama with the predictable expectation of success.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT VETERE whose telephone number is (571)270-1864. The examiner can normally be reached on Mon-Fri 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Cleveland can be reached on 571-272-1418. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert Vetere/  
Examiner, Art Unit 1792

/Michael Cleveland/  
Supervisory Patent Examiner, Art Unit 1792